

the changes made to the claims by the current amendment. The attached page is captioned "**Version with markings to show changes made.**"

The Office Action rejections are summarized as follows:

Claims 1 and 5 are rejected under 35 U.S.C. §102(b) as being unpatentable over Mueller et al.

Claims 2 - 4 and 6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller et al.

Key aspects of the present invention are briefly summarized before considering the rejections. An object of the present invention is to provide a container for holding semi-liquid material, such as mud while permitting some amount of mud to fall through to aid in measuring the amount of mud deposited beneath the container. Another object is to provide separately adjustable legs to enable leveling of the container on non-level surfaces.

None of the patents cited in the subject Office Action disclose or suggest all of the elements as claimed. In particular, the cited patents do not describe an apparatus that includes a wall extending above the plate surface.

#### **I. Newly Added Claims 8 - 9**

The newly added claims emphasize capture additional features of the invention that the Applicants claim as their own. Applicant respectfully asserts that the foregoing amendments put the claims in condition for allowance.

#### **II. The Rejections under 35 U.S.C. § 102(b)**

**Claims 1 and 5 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mueller et al.**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Examiner asserts that Mueller et al. anticipates the claims in the present invention, and renders the claims unpatentable. The Examiner states that the claimed subject matter of claim 1 met by Mueller et al. includes:

- 1) a plate or grille having a plurality of apertures;
- 2) a circumferential wall coupled to a top portion of the plate;
- 3) four hollow sleeves coupled to the wall;
- 4) a leg inserted through each of the sleeves.

The Examiner further states that the claimed subject matter of claim 5 met by Mueller et al. includes:

- 1) a threaded hole perpendicular to the sleeve;
- 2) a threaded stud engaged in the threaded hole;
- 3) a knob coupled to the threaded stud.

Applicant respectfully traverses the rejection.

In particular, Mueller et al. describes a "perimetric rectangular frame defined by longitudinal frame members and transverse frame members" (column 3, lines 1-3). Further, "each frame member is generally C-shaped in cross sectional configuration, having an upper flange, a lower flange, and a generally vertical connecting wall" (column 3, lines 4-7). The apparatus described in Mueller et al. in no way envisions the instant invention. A fair reading of Mueller et al. indicates that the frame disclosed merely holds the wire apparatus used as a shelf and provides a means for attaching the shelving to a corner post. Moreover, Mueller et al. does not disclose a circumferential wall extending above the plate to form a container sidewall, as claimed herein. Therefore, Applicant respectfully traverses the rejection because the elements of the reference do not disclose all of the claim limitations of the present invention. Because Mueller et al. does not teach all claim limitations of the present invention, it does not anticipate the present invention.

Regarding claim 5, it is respectfully pointed out that the claim depends from claim 1, which, as described above, is patentably distinct from Mueller et al. Furthermore, Applicants respectfully disagree with the Examiner's construction of the threaded hole and stud described in Mueller et al. In fact, Mueller et al. teaches away from the construction necessarily implied by the Examiner's

construction, to wit “[c]onventional adjustable metal shelving commonly includes set screws for anchoring the shelves at selected elevations, the screws are turned until they tightly engage the metal corner posts. Overtightening of the screws could damage the posts...” (column 1, lines 5-9). “Although screws are used for securing a shelf to the posts, the screws do not themselves engage the posts. Instead, the screws control positive locking means in the form of clips having projection which seat within indentation in the posts to secure the shelf at any selected elevations” (column 1, lines 58-64). Therefore, Applicant respectfully traverses the rejection because the elements of the reference do not disclose all of the claim limitations of the present invention.

### **III. The Rejection under 35 U.S.C. § 103(a)**

**Claims 2-4, and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mueller et al.**

To establish a *prima facie* case of obviousness, there must be some teaching, suggestion, or motivation, either in the references themselves or in a convincing line of reasoning with knowledge generally available to one of ordinary skill in the art, to combine reference teachings. *See* Manual of Patent Examining Procedure (MPEP) §2144; *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985).

Regarding claim 2, the Office Action asserts that Mueller et al.’s non-circular apertures are functionally equivalent to Applicants’ circular holes, and it would have been an obvious matter of design choice. Applicant respectfully traverses the rejection. Mueller et al. discloses a shelf to hold items and to prevent such items from passing through. The apertures claimed herein are designed to permit setting material placed on the plate to pass through such apertures. One skilled in the art would not use the shelf disclosed in Mueller et al. to pass a limited amount of setting material because the amount passed through would be essentially unlimited. Furthermore, one looking to practice the art described in Mueller et al. would not use the plate described herein because items placed on the plate might fall through the apertures.

Regarding claims 3 and 4, the Office Action asserts that it would have been obvious to one of ordinary skill in the art to use threaded sleeves and legs to make a tight, adjustable fit between the sleeves and legs. Applicant respectfully traverses the rejection. As described above, Mueller et al.

teaches away from using threaded sleeves and legs, such as "the set screw arrangement, while offering an advantage of infinite adjustability, also has the disadvantage of providing little or no indication of just when a shelf is level" (column 1, lines 15-18). Furthermore, there is no suggestion to make such a modification to the art described in Mueller et al.

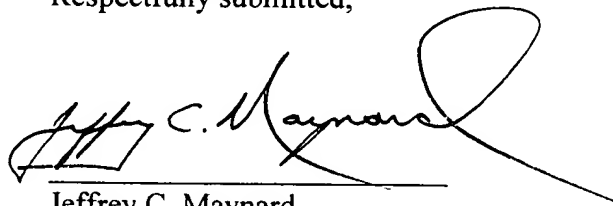
Regarding claim 6, the Office Action asserts that it would have been obvious to one of ordinary skill in the art to use a spherical head as a stop on the legs. Mueller et al. describes that a plurality of shelves can be stacked on the legs described. Such stacking would be impossible if the legs have a head on the legs. Additionally, there is no suggestion to make such modification to the art described in Mueller et al.

All the claims rejected under 35 U.S.C. § 103(a) as being unpatentable over Mueller et al. are dependent upon independent claim 1, which as described above is patentably distinct over Mueller et al. Accordingly, Applicant respectfully suggests that all the claims herein are allowable.

### CONCLUSION

Applicant has made a diligent effort to place the claims in condition for allowance. Accordingly, a Notice of Allowability is respectfully requested. However, if the Examiner is of the opinion that the present application is not in condition for allowance, Applicant respectfully requests that the Examiner contact Applicant's attorney at the telephone number listed below so that additional changes may be discussed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey C. Maynard", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Group Art Unit: 3635

Vadim V. Mikhaylenko *et al.*

Serial No. 09/786,000

Examiner:

Steve M. Varner

Filed: 02/15/2001

For: APPARATUS AND METHOD FOR APPLYING SETTING MATERIAL

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

1. (Amended) An apparatus for applying setting material comprising:

- a. a container comprising
  - i. a horizontal bottom plate for holding such setting material, such plate having a plurality of apertures therein to enable a predetermined amount of such setting material to pass therethrough; and
  - ii. a circumferential wall coupled to a top portion of said plate, wherein such circumferential wall extends above such plate;
- b. at least four hollow sleeves coupled to said [wall] container; and
- c. [a] an adjustable leg inserted through each of said sleeves.